UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/733,808	12/08/2000	Danny Chin	DIVA/241	3084

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EXAMINER
NGUYEN, QUANG N

ART UNIT	PAPER NUMBER
2141	

DATE MAILED: 06/15/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

PTO-90C (Rev. 10/03)

	Application No.	Applicant(s)
Advisory Action *Before the Filing of an Appeal Brief*	09/733,808	CHIN ET AL.
	Examiner	Art Unit	
	Quang N. Nguyen	2141	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED <u>25 May 2005</u> FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

   a) ☐ The period for reply expires _____months from the mailing date of the final rejection.

   b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

      Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

<u>NOTICE OF APPEAL</u>

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

<u>AMENDMENTS</u>

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will <u>not</u> be entered because

   (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);

   (b) ☐ They raise the issue of new matter (see NOTE below);

   (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or

   (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

      NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).

5. ☐ Applicant's reply has overcome the following rejection(s): _____.

6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).

7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

   The status of the claim(s) is (or will be) as follows:

   Claim(s) allowed: _____.

   Claim(s) objected to: _____.

   Claim(s) rejected: _____.

   Claim(s) withdrawn from consideration: _____.

<u>AFFIDAVIT OR OTHER EVIDENCE</u>

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will <u>not</u> be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).

9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will <u>not</u> be entered because the affidavit or other evidence failed to overcome <u>all</u> rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).

10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

<u>REQUEST FOR RECONSIDERATION/OTHER</u>

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: <u>See attachment.</u>

12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). _____

13. ☐ Other: _____.

Detailed Action

1.   This Office Action is in response to the Response filed on 05/25/2005. Claims 1-19 remain for examination.

Claim Rejections - 35 USC § 102

2.   The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

3.   **Claims 1-19 are rejected under 35 U.S.C. 102(e) as being anticipated by Lumelsky et al. (US 6,377,996), herein after referred as Lumelsky.**

4.   As to claim 1, Lumelsky teaches a method for migrating a user from a source server module *(primary server)* providing a content stream to said user to a destination server module *(auxiliary server)*, comprising:

determining, for said content stream being provided to said user, a transitional extent defining an appropriate first extent to be provided to said user via a destination server module *(i.e., determining parameters such as the Last Segmentation Marker, the Target Segmentation Marker, etc., with the "L" number of bytes between markers, to be inserted into the content stream to define the transitional segment used by the target server to schedule the switch and to allow the user to continue receiving the content stream from the target server without too much interruption, i.e., defining an appropriate first extent to be provided to said user via a destination server, i.e., via the target server)* (Lumelsky, Figs. 7 and 13, C3:L66 - C4:L3, C8: L44-52 and C10: L33-48);

determining if said destination server module is capable of providing said transitional extent to said user within a first time period *(based on the Target Segmentation Marker associated with the request, the target server may estimate whether given the current network conditions and resources, a streaming connection would be available with a safe margin of error, i.e., within a time out period, for performing a seamless switch at the desired Target Segmentation Marker)* (Lumelsky, C10: L48-54 and C11: L53-59); and

causing said destination server module to provide said transitional extent and subsequent extents associated with said content stream to said user (Lumelsky, C10:L64 - C11: L29).

5.   As to claim 2, Lumelsky teaches the method of claim 1, wherein said first time

period comprises a transitional extent deadline determining the time at which said

transitional extent must be retrieved from a storage device *(i.e., a transitional time out*

based on or defined by a Deadline Segmentation Marker) (Fig. 13 and C10: L55-63).

6.   As to claim 3, Lumelsky teaches the method of claim 1, wherein said second step

of determining comprises the steps of:

        communicating at least said transitional extent including a transitional extent

deadline to said destination server module *(to migrate a client and its streaming*

session, AS1 710 signals the selected target server PS2 700 with the hand-off request

message 740 including a Deadline Segmentation Marker as in Fig. 13) (C10: L33-48);

and evaluating a message received from said destination server module, said message

comprising one of a rejection, an acceptance and a modified acceptance of a migration

of said user to said destination server module (C10: L55-63).

7.   As to claim 4, Lumelsky teaches the method of claim 3, wherein in the case of a

rejection of the migration of said user to said destination server module, an alternate

destination server module is selected (C11: L60-67).

8.   As to claim 5, Lumelsky teaches the method of claim 3, wherein in the case of an

acceptance message, said method further comprises the steps of determining in the

event of said transition extent deadline has passed; determining the next transitional

extent for said content stream being provided to the user *(i.e., if the hand-off proceed message was not received and a time out was taken, the processing returns to step 1000 to receive more signals)* (Fig. 11 and C12: L42-45).

9.   As to claim 6, Lumelsky teaches the method of claim 5, wherein in response to said transitional extent deadline not having passed, stopping output and sending a trigger message to said destination server module (C11: L17-29).

10.   As to claim 7, Lumelsky teaches the method of claim 6, further comprising the step of waiting for a response message from said destination server module *(i.e., the main/primary server waiting for an acceptance or denial of service for the hand-off request from the target server);* and in response to an error indicative response message, selecting an alternative destination server module *(i.e., in case of a denial of service for the hand-off request from the target server, the process returns to step 990 to select an alternative server)* (Fig. 10, C10: L55-63 and C11: L60-67).

11.   As to claim 8, Lumelsky teaches the method of claim 3, wherein in response to a modified acceptance message, said method performs the steps of:

selecting a new transition extent in the case of said modified acceptance being appropriate *(i.e., facilitating the negotiation of a common start point);* and selecting an alternative destination server module if said modified acceptance is inappropriate *(the migration may be repeated until a server satisfying a constraint is found)* (C14: L17-49).

12.   As to claim 9, Lumelsky teaches the method of claim 4, wherein an alternate extent is selected to cause a repetition in content preparation *(i.e., inherently, facilitating the negotiation of a common start point could cause a repetition in content preparation).*

13.   As to claims 10-11, Lumelsky teaches the method of claim 1, wherein said transitional extent is entered at an extent boundary *(i.e., the market insertion unit 406 prepares and formats the segmentation markers 408, 410, 494 and inserts them among the frames 418 of the original stream 416)* and including an asserted discontinuity flag *(i.e., including an End Marker Flag)* (Figs. 6-7 and C8: L29-59).

14.   As to claims 12-14, Lumelsky teaches the method of claim 1, wherein said transitional extent is determined with respect to a packet offset parameter comprising an asserted discontinuity flag *(i.e., comprising an End Marker Flag)* in a header portion of said transitional offset packet (Fig. 7 and C8: L60-64).

15.   Claims 15-16 are corresponding receiving method claims of method claims 1-8; therefore, they are rejected under the same rationale.

16.   Claims 17-19 are corresponding apparatus claims of method claims 1-8; therefore, they are rejected under the same rationale.

Response to Arguments

17.   In the remarks, Applicant argued in substance that

(A)   Prior Art does not teach or suggest "a transitional extent defining an appropriate first extent to be provided to said user via a destination server module", as recited in claims 1 and 17.

As to point (A), **Lumelsky** teaches a method for providing parameters on location, time and manner *(where, when, and how)* to migrate a client across primary servers and/or auxiliary servers, wherein the primary server *(AS1 710)* signals the selected target server *(PS2 700)* with a hand-off request message includes the parameters such as the Primary Server unique ID, the Target Server unique ID, the Client unique ID, the Hand-off unique ID, the Content/Stream unique ID, the Deadline Segmentation Marker, the Last Segmentation Marker, the Target Segmentation Marker, etc., wherein *the Last Segmentation Marker, the Target Segmentation Marker (with the "L" number of bytes between markers) to be inserted into the content stream to define the transitional segment used by the target server to schedule the switch and to allow the user to continue receiving the content stream from the target server without too much interruption,* (i.e., defining an appropriate transitional extent to be provided to said user) **(Lumelsky, Figs. 7 and 13, C3:L66 - C4:L3, C8: L44-52 and C10: L33-48)**; and once upon a stream connection is then scheduled at step 1040, and setup is performed at step 1040 and the streaming is initiated at step 990 *(once its switching unit*

determines that it is safe to switch from the primary server AS1 710 to the selected target server PS2 700, i.e., before the Deadline Segmentation Marker expires), the target server becomes the main server to continue to provide the content stream to the user **(Lumelsky, Fig. 10, C11: L8-29 and C12: L42- 53)**.

18.   Applicant's arguments as well as request for reconsideration filed on 05/25/2005 have been fully considered but they are not deemed to be persuasive.

19.   Any inquiry concerning this communication or earlier communications from the examiner should be directed to Quang N. Nguyen whose telephone number is (571) 272-3886.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's SPE, Rupal Dharia, can be reached at (571) 272-3880. The fax phone number for the organization is (703) 872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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SUPERVISORY PATENT EXAMINER